

JPA File No.: 07-013I  
AG Contract No.: P001-2007-000773  
Project No.: CM-GIL-0(200)A  
Project: Design Traffic Management  
Section:  
TRACS No.: SS63701C  
Budget Source Item No.: N/A

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
TOWN OF GILBERT

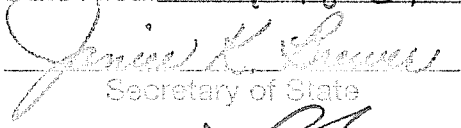

**THIS AGREEMENT** is entered into this date 18th 9 September, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN, acting by and through its MAYOR and TOWN COUNCIL (the "Town"). The State and the Town are collectively referred to as "Parties".

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.
3. Congress has authorized appropriations for, but not limited to: the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges, the elimination of roadside obstacles; and the application for pavement markings.
4. Such project is within the boundary of the Town has been selected by the Town; the field survey of the project has been submitted to the Federal Highway Administration ("FHWA") for its approval.
5. The Town, in order to obtain Federal funds for the construction of the project, is willing to provide Town funds to match Federal funds in the ratio required or as finally fixed and determined by the Town and FHWA.
6. The interest of the State for this project is in the acquisition of Federal funds for the use and benefit of the Town and is the designated agent for the Town. Funds expended for the project, are authorized by reason of Federal law and regulations.

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

---

NO. 29244  
Filed with the Secretary of State  
Date Filed: 9-18-07  
  
Secretary of State  
By: 

7. The work embraced in this Agreement is to purchase equipment and to install a video wall for the Town's Traffic Management Center, hereinafter referred to as the "Project". The Town will be responsible for administering the purchase of this equipment through State Procurement Process. The estimated cost of the Project is as follows:

Total Estimated Project Cost (TRACS No. SS63701C)	\$ 495,000.00
Federal-aid Funds @ 94.3% of \$390,670.00 (capped)	\$ 368,401.00
Estimated Town Funds @ 5.7% of \$390,670.00	\$ 22,269.00
Estimated Town funds @ 100%	\$ 104,330.00
<b>Estimated Total Town Funds</b>	<b>\$ 126,599.00</b>

## **II. SCOPE OF WORK**

### **1. The State shall:**

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage.

b. Approve the Project if such project funds are available by FHWA for the Project. Be the designated authorized agent for the Town and, through the State's Procurement Process, advertise for, receive and open bids with the aid and consent of the Town and the FHWA.

c. Upon execution of this Agreement, coordinate with the Town regarding the specifics of the equipment to be ordered by the State to best ensure the requirements of the Project are met. Enter into a contract(s) with a firm(s) to whom the award is made for the purpose of the Project.

d. Instruct the vendor to deliver equipment directly to the Town for final acceptance and to bill the Town directly. The State will reimburse the Town with capped Federal funds up to \$368,401.00 within thirty days (30) after receipt and approval of an invoice for equipment purchased under this Agreement. Therefore, the Town agrees to set aside funds in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

e. Not be obligated to maintain said equipment, should the Town fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

### **2. The Town shall:**

a. Designate the State as authorized agent for the Town, if such project is approved by the FHWA and project funds are available.

b. Be responsible for any overage should costs exceed the maximum Federal funds available for the Project. Agree the cost of the analysis and works covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

c. Coordinate with the State during the procurement process for the Project.

d. Be responsible for the installation of the traffic operation and purchase of the equipment under this Agreement and maintains all improvements provided by this Project for the entire design life of the system and equipment.

e. Be responsible for unforeseen conditions or circumstances increase the cost of said work, such that a change in the extent or scope of the work called for in this Agreement becomes necessary, be obligated to incur and will pay for said increased costs.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no liability under this Agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds, that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any performance or nonperformance of any provisions of this Agreement by the State, any of its departments agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys fees.

2. The cost of the equipment purchased and to install a video wall covered by this Agreement is to be borne by FHWA and Town, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

3. This Agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this Agreement for maintenance shall be perpetual, unless assumed by another governmental entity.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

Town of Gilbert  
Attn: Rick Allred  
90 East Civic Center Drive  
Gilbert, AZ 85296  
(480) 503-6841  
(480) 497-4943 Fax

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

---

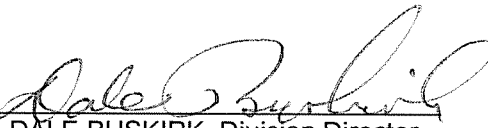
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**TOWN OF GILBERT**

By   
STEVEN M. BERMAN  
MAYOR

**STATE OF ARIZONA**

Department of Transportation

By   
DALE BUSKIRK, Division Director  
Division Director

ATTEST:

By   
CATHY TEMPLETON  
Clerk

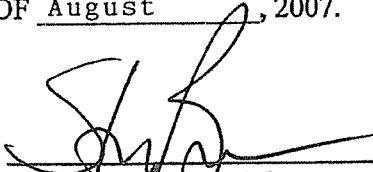
RESOLUTION NO. 2804

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION.

WHEREAS, the Common Council of the Town of Gilbert, Arizona, has determined it is in the best interest of the Town to enter into an intergovernmental agreement with the State of Arizona, Arizona Department of Transportation for the purpose of defining responsibilities for the funding, purchase and installation of equipment and a video wall for the Town's Traffic Management Center, TRACS No. SS63701C;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona that the Mayor be and is hereby directed to executed the intergovernmental agreement between the State of Arizona and the Town of Gilbert, AG Contract No. P001-2007-000773;

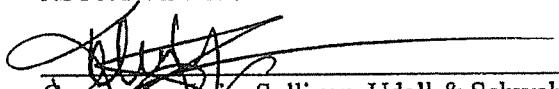
PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 21 DAY OF August, 2007.

  
\_\_\_\_\_  
Steven M. Berman, Mayor


ATTEST:

  
\_\_\_\_\_  
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.,  
Town Attorneys  
By: Susan D. Goodwin

I hereby certify the above foregoing Resolution No. 2804 was duly passed by the Council of the Town of Gilbert, Arizona, at a regular meeting held on August 21, 2007, and that quorum was present thereat and that the vote thereon was 7 ayes and 0 nays and 0 abstentions.  
0 Council members were absent or excused.

  
Catherine Templeton, Town Clerk  
Town of Gilbert

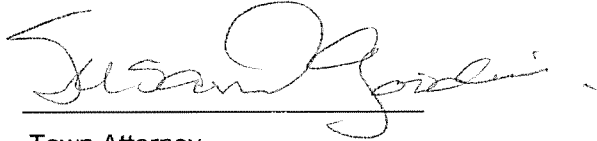
F:\578\Resolutions\IGA-ADOT3.doc

ATTORNEY APPROVAL FORM FOR THE TOWN OF GILBERT


I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the TOWN OF GILBERT, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 21 day of August, 2007.

A handwritten signature in cursive script, appearing to read "Susan Gordon", written over a horizontal line.

Town Attorney

<p>TERRY GODDARD Attorney General</p>	<p> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
---	--	--


**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. P0012007000773 (**JPA 07-013-I**), an Agreement between public agencies, i.e., The State of Arizona and Town of Gilbert, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: September 10, 2007

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:57454  
Attachment